

LR2-603 . Court-annexed arbitration.

SECTION I: GENERAL PROVISIONS

A. **Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

- Appeals
- Uniform Arbitration Act
- Extraordinary writs
- Adoption
- Commitment
- Conservatorship
- Guardianship
- Probate
- Children's Code
- Domestic relations
- Workers' compensation
- Student loan
- Driver's license
- Election
- Tax

B. **Court hearings.** If a court hearing is required regarding any aspect of arbitration prior to referral or any matter during referral, the court shall set and hear the matter promptly after the matter is brought to the attention of the assigned judge by request for hearing or by the court alternatives director.

C. **"At issue" required.** All cases referred to arbitration must be "at issue" prior to referral. For purposes of this rule, a case is "at issue" when at least one answer to the complaint has been filed. Answers to cross-claims, counterclaims and third-party complaints need not have been filed. Service on all parties need not have been made.

SECTION II: MANDATORY REFERRAL

A. **Types of cases for mandatory referral.** All cases, jury and non-jury, shall be referred to arbitration where no party seeks relief other than a money judgment and no party seeks an amount in excess of twenty-five thousand dollars (\$25,000.00) from any party or combination of parties, exclusive of punitive damages, interest, costs and attorney fees.

B. **Mandatory certification.** In all cases filed on or after the effective date of this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint or any other pleading, in which affirmative relief is requested, shall file and serve concurrently with the pleading for affirmative relief, a separate certification indicating whether the party is or is not seeking relief other than a money judgment and whether the amount sought exceeds or does not exceed twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs and attorney fees. The certification shall be a good faith attempt to state the type and amount of relief to be sought at trial and shall not act as a limitation on relief.

C. **Review of certification; referral order.** Within thirty (30) days after a case is at issue, the court will review the court file, including the certifications filed, to determine whether referral to arbitration is

mandated by Section II(A) of this rule. If so mandated, the court will prepare and file an order referring the case to arbitration, and mail or deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion may postpone filing a referral order if it appears from the court file that the case may be resolved upon a pending motion for judgment on the pleadings or other pending dispositive motion. If referral is not mandated, no order will be entered.

D. Failure to file certification. If a party fails to file a certification, the court after written notice may impose an appropriate sanction including but not limited to dismissing the party's complaint without prejudice. The court in its discretion may impose such sanction without hearing.

E. Referral upon motion. At any time after a case is at issue and notwithstanding any certifications filed, upon a party's motion or the court's own motion, the court may enter an order referring the case to arbitration provided the court finds that the requirements of Section II(A) are met. The court in its discretion may enter such an order without hearing.

F. Denial of referral. Notwithstanding a finding that the requirements of Section II(A) have been met, at any time prior to referral, upon a party's or the court's own motion, the court for good cause may deny referral to arbitration. The court in its discretion may enter such an order without hearing.

SECTION III: PERMISSIVE REFERRAL

Any case may be referred to arbitration where the parties stipulate to arbitration. The court may require the parties to stipulate to an arbitrator as set forth in Subsection IV(C)(3) of this rule.

SECTION IV: ARBITRATORS

A. Arbitrator pool. The court will maintain a pool from which arbitrators will be appointed. The pool shall include all active members of the State Bar of New Mexico who have been licensed to practice law for five (5) or more years and who are residents of or have an office in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys, out-of-Bernalillo County attorneys and out-of-state attorneys, may be included in the pool upon written request to the court alternatives director. The chief judge for good cause may remove an attorney from the arbitrator pool either temporarily or permanently. Such removal may be upon the court's own motion and without notice to the attorney, or upon written request to the court alternatives director. The court will periodically review the pool of arbitrators for completeness and accuracy, and may require any member of the State Bar of New Mexico to submit information necessary for this purpose. The court will provide written notice to attorneys as they are added to the pool, either by letter or notice published in the Bar Bulletin.

B. Training. The court may require any attorney who is part of the arbitrator pool to attend arbitrator training.

C. Appointment to case. After a case is referred to arbitration, an attorney shall be appointed as arbitrator by the filing of a court order upon either random selection, court selection or stipulation. With appointments upon random or court selection, the court will file an order appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled to notice. With stipulations, the parties shall file the order of appointment.

(1) Random selection.

(a) Notice of choices. Within ten (10) days after a case is referred to arbitration, the court alternatives director will mail to all parties a notice listing three (3) attorneys as choices for arbitrator. The three attorneys shall be selected at random from the arbitrator pool except that none of the three may be employed by the same law firm as any of the other three or as any counsel in the case. The notice of choices shall not be filed with the clerk.

(b) Peremptory strikes. Within seven (7) days after the notice of choices is mailed, each party

may peremptorily strike one attorney by written notice to the court alternatives director. A maximum of two strikes will be counted altogether; a maximum of one strike will be counted for each side, e.g., all plaintiffs or defendants or third-party defendants; strikes will be counted in the order received. The first attorney remaining after strikes are counted shall be appointed. The period for making strikes shall not be extended. The notice of strikes shall not be filed with the clerk.

(2) **Court selection.** For good cause, the court may select an arbitrator rather than provide the parties with a notice of choices.

(3) **Stipulation.** The parties may stipulate to the appointment of any licensed attorney, whether or not part of the pool and with any length of experience, by stipulated order filed within seven (7) days after the notice of choices is mailed, or within seven days after a vacancy is created by order of excusal or otherwise. The stipulated order must be approved by all parties and by the proposed arbitrator. Approval of counsel and the proposed arbitrator may be telephonic; approval of parties pro se must be by signature. The court or the proposed arbitrator may require the parties to pay compensation at the arbitrator's usual hourly fee.

(4) **Excusal; conflicts check.** Promptly upon appointment, the arbitrator shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties thereof. Upon discovery of a conflict of interest in hearing a case, an arbitrator shall file a motion for excusal. Upon a party's, the arbitrator's or the court's own motion, the court for good cause may order that the arbitrator be excused from appointment to the case. The court in its discretion may enter such an order without hearing.

(5) **Vacancy.** Vacancies caused by excusal or otherwise shall be filled by appointment of the first of the remaining three choices or if none remains, by appointment of an attorney selected by the court, or the parties may stipulate to a replacement as provided in Subsection IV(C)(3).

D. **Compensation.** The court shall compensate arbitrators in the amount of one hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is excused from appointment. The arbitrator shall submit a written request for compensation to the court alternatives director within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a waiver of compensation. Arbitrators compensated by the parties pursuant to Subsection IV(C)(3) shall not be compensated by the court.

SECTION V: PROCEDURES DURING REFERRAL

A. General.

(1) **Court jurisdiction.** The assigned judge continues to have jurisdiction over a case during referral to arbitration. In general, however, the assigned judge should not hear any matters after an arbitrator is appointed except the judge may hear the following:

Motions to excuse the arbitrator

Motions to withdraw referral to arbitration

Motions for sanctions pursuant to Subsection V(A)(5)

Motions for free process

Motions regarding attorney representation

Motions to add new parties

Motions to set aside default or any other judgment

Motions to compel settlement

Any post-judgment enforcement and execution matters

Requests for settlement conference pursuant to Second Judicial District Local Rules, Rule [LR2-602](#)

NMRA.

After a case is referred to arbitration and before an arbitrator is appointed, the court in its discretion may vacate any pending hearings on matters which may be heard by the arbitrator, and may set hearings on matters needing immediate consideration.

(2) **Arbitrator jurisdiction, powers, duties.** The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is excused or until ten (10) days after an award is filed or until the arbitration proceedings are otherwise concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator's decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider the efficient, cost-effective and informal resolution of the case as a factor in all the arbitrator's decisions and in all aspects of the arbitrator's management of the case. The arbitrator may limit discovery whenever appropriate. The arbitrator may administer oaths. With the exception of contempt, the arbitrator may enter appropriate sanctions including sanctions pursuant to Rules [1-016](#), [1-030](#) and [1-037](#) NMRA, or any other Supreme Court rule, sanctions for failure to comply with any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's decisions. Upon agreement of the parties, the arbitrator may serve as a mediator or settlement facilitator. The arbitrator's jurisdiction, powers and duties may not be delegated. The arbitrator must personally conduct the hearings and trial, and must personally sign decisions and the award.

(3) **Supreme Court and local rules.** All Supreme Court rules including rules of civil procedure (including Rule [1-006](#)(D) NMRA) and rules of evidence, and all second judicial district local rules, apply during referral to arbitration unless specifically waived by written court order or the arbitrator. The arbitrator may waive rules of evidence only upon agreement of the parties.

(4) **Good faith participation.** All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter an award of default or of dismissal against any party failing to participate in good faith or reflect the failure in the award. In any such award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider such certification when deciding attorney fees, costs and interest on appeal, or when considering whether to set aside the default.

(5) **120-day deadline; sanction.** Within one hundred twenty (120) days after the arbitrator is appointed, the arbitrator shall file an award unless the arbitration proceedings have otherwise been concluded. Upon a party's, the arbitrator's or the court's own motion, the court for good cause may extend the one hundred twenty (120) day period. The court in its discretion may enter such an order without hearing. If the arbitrator or a party fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator or party to pay a penalty into the second judicial district arbitration fund.

(6) **Filing papers.** Any motion or other paper to be heard or otherwise considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any decisions except for the award. Upon a party's or the court's own motion, the court may order that an inappropriately filed paper be stricken. The court in its discretion may enter such an order without hearing. Failure to submit a motion to strike shall be deemed waiver of any prejudice caused by a paper inappropriately filed.

(7) **Court file: review, copy.** The arbitrator may review the court file at any time during regular court hours. The court shall provide the arbitrator a copy of the file or portions of the file at no cost upon request; requests shall be made to the court alternatives director.

(8) **Summonses; subpoenae.** The clerk shall issue summonses and subpoenae in cases referred to arbitration in the same manner as with other civil cases. Such summonses and subpoenae shall be served and enforceable as provided by law.

(9) **Record of proceeding.** Any party to an arbitration proceeding, at the party's own expense, may engage a certified court reporter to make a record of testimony given at an arbitration proceeding for use as allowed by the New Mexico Rules of Evidence. A copy of the record may be obtained by any other party to the arbitration proceeding in the same manner that deposition copies are obtained. Costs associated with making the record or obtaining a copy of it shall not be recoverable.

(10) **Withdrawal of referral.** At any time after a case is referred to arbitration, upon a party's, the arbitrator's or the court's own motion, the court for good cause may order that the referral to arbitration be withdrawn and the case be returned to the court's docket. The court in its discretion may enter such an order without hearing.

B. Hearings; trial.

(1) **Place, date and time.** The arbitrator shall set an appropriate place, date and time for all hearings and trial. Hearings shall be set during regular business hours except upon agreement of the parties. The arbitrator may conduct hearings by telephone.

(2) **Notice.** The arbitrator shall provide twenty (20) days written notice of trial. The arbitrator shall provide five (5) days notice, in writing or by telephone, of all other hearings. Notice of trial or hearings may be waived by the parties.

(3) **Requests for hearing.** Unless otherwise directed by the arbitrator, parties may request hearings informally, by letter or telephone, provided the requesting party notifies all other parties as well as the arbitrator. The arbitrator may decide motions and other preliminary matters on written submissions.

(4) **Statement of witnesses, exhibits.** No later than ten (10) days prior to trial, each party shall serve upon all other parties a statement listing all the exhibits and witnesses the party may use and briefly describing the matters about which each witness will be called to testify. The arbitrator may waive this provision.

(5) **Return of exhibits and depositions.** After an award is filed or the arbitration proceedings are otherwise concluded, the arbitrator shall return all exhibits and depositions to the submitting party.

C. Evidentiary exceptions. The following exceptions apply during referral to arbitration.

(1) **Depositions.** The arbitrator may hear testimony by deposition.

(2) **Documentary evidence.** The following documents, if relevant, shall be admitted in evidence without further proof provided a copy of said documents is served upon all parties no later than ten (10) days prior to the hearing or trial:

(a) Estimates and bills for services and products, if dated and itemized.

(b) Reports of experts, if dated and signed.

(c) Records and reports as described in Rule [11-803](#) NMRA, Paragraphs (F), (H), (I), (K), (L), and (N) through (R) NMRA.

D. Award.

(1) **Final decision; scope.** The arbitrator's final decision shall be called an "award". The award shall clearly set forth the amount awarded to each party and address all pending claims, attorney fees, costs and interest as allowed by law, including any required award of costs pursuant to Rule [1-068](#) NMRA. The award may be an award of default, dismissal, summary judgment or money damages.

(2) **Amount.** The amount of the award shall be limited only by the evidence and shall not be limited by the circumstances under which the case was referred to arbitration.

(3) **Filing.** Unless the parties agree otherwise, within ten (10) days after the last hearing, the arbitrator shall file an award with the clerk and serve copies on all parties entitled to notice. If an arbitrator

fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator to pay a penalty into the second judicial district's arbitration fund.

(4) **Amended award.** Within ten (10) days after an award is filed, the arbitrator may file an amended award. Copies shall be served on all parties entitled to notice.

(5) **Binding award.** At any time before the award is filed, the parties may file with the clerk a stipulation that the award will be binding and that the right to appeal the award is waived.

(6) **Judgment on award.** If no appeal is taken and the time for appeal has expired or the right to appeal has been waived or the appeal has been voluntarily dismissed, the court shall prepare and file a judgment or final order adopting that part of the award not appealed as a judgment or final order of the court, and mail or deliver endorsed copies to all parties entitled to notice. Such judgment or final order shall be enforceable and binding as any other judgment or final order.

SECTION VI: APPEAL

A. **Right to appeal.** Any party of record at the time the arbitrator's award is filed may appeal the award, except that a party may not appeal an award of default, including an award of default entered pursuant to Section V(A)(4) of this rule. An award of default shall only be set aside pursuant to Rules [1-055](#) and [1-060](#) NMRA.

B. Procedures to appeal.

(1) **Notice of appeal.** To exercise the right to appeal, a party must file a "notice of appeal from arbitration" with the clerk within fifteen (15) days after the award or an amended award, is filed. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fifteen (15) days after the date on which the first notice of appeal was served. The period for filing the notice shall not be extended. A copy of the notice of appeal shall be served on all parties entitled to notice. Cross-appeals are not required.

(2) **Voluntary dismissal.** At any time after filing a notice of appeal and before trial before the assigned judge, a party may withdraw the appeal by filing a notice of voluntary appeal dismissal. A copy of the notice shall be served on all parties.

C. Procedures on appeal.

(1) **Docket status.** After a notice of appeal is filed, the case shall be returned to the same status on the assigned judge's docket that it had prior to referral to arbitration. Requests for trial must be submitted as required by local rule.

(2) **De novo proceedings.** All appeals shall be in the form of de novo proceedings before the assigned judge. No reference shall be made to any of the arbitrator's decisions including the award. Neither the arbitrator nor the court alternatives director shall be permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed and until disposition of the appeal, the court shall seal the award.

(3) **Discovery.** Any discovery obtained while the case was referred to arbitration may be used in the de novo proceedings.

D. **Award of fees, costs and interest against appellant.** If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator's award, the court shall order that the appellant pay all other parties' expenses incurred during the appeal including but not limited to reasonable attorney fees, costs and pre-judgment interest dating from the arbitration award. The court for good cause shown may waive this provision; the court shall state the basis for its good cause finding on the record.

[As amended, effective March 1, 1997; as amended by Supreme Court Order 06-8300-26 effective January 15, 2007.]